

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

IN THE
Court of Appeals, District of Columbia

April Term, 1928

—
No. 4809
—

578

DOUGHERTY et al.

VS.

UNITED STATES EX REL. SPENCER ROBERTS.

—
BRIEF ON BEHALF OF APPELLEE
—

W. GWYNN GARDINER,
SOUTH TRIMBLE, JR.,
Attorneys for Appellee.

IN THE
Court of Appeals, District of Columbia

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DOUGHERTY et al.

VS.

UNITED STATES EX REL. SPENCER ROBERTS.

BRIEF ON BEHALF OF APPELLEE

STATEMENT OF THE CASE

On July 23, 1903, appellee was appointed a member of the Metropolitan Police force at a salary of Sixty (\$60.00) a month (R. 2). He continued in active duty as a member of the Metropolitan Police Department of this District until August 1, 1923, when he was retired as being unfit for duty as a policeman (R. 3). Thus being in active service as a member of the Metropolitan Police force for twenty years. He was retired as a member of the force as a result of "disability caused by injuries received in line of duty," and was given a pension, by the then Pension Board, of Fifty (\$50.00) Dollars per month (R. 3).

On July 23, 1903, when appellee first became a member of the Metropolitan Police force, there was a pen-

sion allowable to policemen, but the moneys with which to pay these pensions was derived from certain deductions from the salaries of the officers, as small as it was, from fines from the Police Court, moneys from dog licenses, and such. This was not satisfactory and as a result of the small salary received, great hardship came to many officers since they were unable to save a single penny out of their monthly salary, and when sickness or accident overtook them it was often found that there were no funds in the pension fund out of which they could receive their living pending this disability, or funds to pay the incidental extra expense necessary to be incurred by them as a result of said sickness or accident disability.

Congress would, therefore, from time to time appropriate sufficient funds to make up the deficiency, and, in addition thereto, on June 13, 1909, passed an Act which required retired policemen to report for an examination every two years, and if, by the physical and medical examination made, it was found that the police officer so retired could perform any labor, that is, if the Board found that he was not entirely disabled they might reduce his pension to such sum as the Retiring Board so sitting might find and determine (R. 3).

This Court construed this Act in

Rudolph vs. U. S. ex rel. Brosnan, 41 D. C. Appeals, 29,

and mandamus the Commissioners to pay Brosnan his full pension of \$50 per month, which they had reduced to \$1 per month, upon the claim that he was financially able to maintain himself without this pension.

This act, however, did not give relief to these disabled policemen and firemen, since even with the curtailment made in the payments as a result of the passage of said Act, there was still not sufficient funds in the treasury to the credit of the pension fund to pay these disabled officers, and the appropriations, from time to time, of Congress did not relieve the suffering as a result of the lack of funds to pay, pending the appropriations.

With this picture before it, the Congress of the United States on September 1, 1916, passed a new pension law (39 Stats., p. 718), having for its purpose the protection of firemen and policemen who had been retired from disability incurred in line of duty, by directing the deposit into this fund by the Collector of Taxes of such sums as necessary to make up any deficiency at any time.

The trial board, consisting of two policemen and an assistant Corporation Counsel, continued its activities, exercising its powers to give to a police officer one dollar if it pleased, or such sum in excess of that amount up to the limits of the restrictions placed upon it by these Acts of Congress, with the result that great bitterness arose, accusations were made, injustice was claimed, preferences were allowed, and injustices were done.

Congress being advised of these complaints and claims of unfairness, passed an Act, approved February 17, 1923, entitled

**“An Act to Equalize Pensions of Retired Policemen
and Firemen of the District of Columbia, and
for Other Purposes.”**

When this act was passed and became a law some con-

fusion arose in the minds of the then District Commissioners in whom the power was vested to carry out the provisions of the Act as to just what was meant by the language of the Act (R. 18). Captain James F. Oyster was then one of the Commissioners of the District of Columbia and was the Commissioner who had, under the assignments among the Commissioners, the primary duty of supervising the firemen and policemen and of construing and carrying out the Acts and the enactments of Congress dealing exclusively with the policemen and firemen. This Commissioner, therefore, after the passage of this Act, interviewed the Chairman of the Committee having this bill in charge in the House, and the Chairman of the Committee having this bill in charge in the Senate, with the result that the Chairmen of both Committees advised him that it was the purpose and intention of the Congress of the United States in passing this Act to do what the preamble of the Act states, that is, *equalize* pensions of retired policemen and firemen, and thereby give to each policeman and each fireman, the same treatment, with the same pension applicable to his rank upon retirement, but based upon present salary payable to officers of equal rank on date of passage of Act.

With this information conveyed to the Commissioners by the Chairmen of these Committees, and construing the Act in that manner themselves, the Commissioners of the District of Columbia, by the order of said Commissioners, dated December 5, 1924, ordered and directed that the pension of each policeman and each fireman of the same rank should be the same, and that there should be no discrimination against any of them, or power in the retiring board to discriminate against them; thus once and forever removing that ob-

jectionable thing, that is the power of the retiring board to measure scores with the individual policeman as it, or some member of that board, might wish or desire (R. 18).

Therefore, on December 5, 1924, the Commissioners, by an order, without any physical examination or without any application or act of the policemen, placed every policeman and fireman then on the pension rolls, except this appellee, his co-appellee in the companion suit, and two others referred to in the pleadings in this case, to \$87.50 (R. 5), thus picking out and discriminating against these four men, and this notwithstanding the fact that these four men had been officers of that force for at least twenty years, and many of the other officers whose pensions had been so increased were officers on active duty for a very limited time, several not as much as five years (R. 10).

These officers endeavored to obtain justice, but were met each time with refusal. They could obtain no relief, with the result that they advised with their present counsel of record on March 5, 1927, who in turn communicated with the Commissioners, inviting their attention to this condition (R. 9). After waiting six weeks the Commissioners replied through their present counsel of record (R. 11), and for the first time we find the claim made that these men were not totally disabled and therefore were given only part pension.

In the meantime, however, between the date of this letter of March 5, 1927, to the Commissioners, and the Commissioners' answer, they gave to two of the officers complaining the amount of pension justly due them, (R. 12). They sent notice to the appellee and his brother officer, who filed suit in the companion case with this, to appear before the examining board, but

when they reported to the examining board the surgeons declined to give them any examination, taking the position that it was a matter for the Commissioners and corporation counsel and not for the examining board, with the result that they were again turned down and refused any consideration (R. 12).

Thereupon the present petitions were filed for writs of mandamus. The lower court granted relief and ordered the writs to issue. Thereupon, the Commissioners appealed to this court, using the very flimsy suggestion that if they acquiesced in the order of the Court it would result in disrupting the morals of the police force.

ARGUMENT

To begin with, the Act in question, that is the Act of 1923 (R. 3), preamble states thus:

**“An Act to Equalize Pensions of Retired Policemen
and Firemen of the District of Columbia, and
for Other Purposes.”**

Now there can be no dispute but what the law is that the preamble of the bill, declaring the intention of Congress and the purpose of the act is entitled to the greatest weight. See

Block v. Hirsh, 256 U. S., 135-170.
Chastleton Corporation v. Sinclair,
264 U. S., 543-551.

Now with this language before us in the preamble of this bill and the undisputed law being that it is entitled to the greatest weight in the construction of the bill, it would seem at the outset that it was the purpose and intention of Congress to equalize all pensions.

Pensions cannot be equalized unless all pensioners are receiving the same pension based upon the same relative rank.

Webster's International Dictionary defines the word "Equalize" to be equal to; to equal; match; to pronounce equal; to make equal; to cause to correspond or be like in amount or degree as compared; as to equalize accounts, burdens or taxes. We find the same authority defining "Equal" thus: Exactly the same in measure or amount, however regarded, alike or identical in magnitude, quantity number or degree; characterized by justice or equity, fair, impartial, equable, uniform, level.

Having in mind Webster's definition of Equalize and Equal, and then applying the same definition to the language of the preamble of the bill itself, which states: "An Act to equalize pensions of retired policemen and firemen of the District of Columbia," it would seem that it was intended unquestionably by Congress to give to each officer of the same rank the exact amount of pension.

Now with that definition before us, and with the preamble of the bill before us, and the construction of such a statute by the Supreme Court of the United States, hereafter cited in this brief, which states that the intention of Congress, as defined by the chairmen of the committees will be the construction to be placed upon the statute by the Court if such construction will *avoid discrimination and injury* to the individual be-

fore the Court, leaves no obstacle or difficulty in the mind of the Court, in construing the bill here before us, to the effect that petitioner's treatment should be the same as the other officers. I say that because unless that construction be placed on it, there would be a discrimination against the officer which would be exactly opposite to the interpretation of such statute by the Supreme Court in the case hereafter cited.

We have, however, here an allegation, undenied, that the chairman of the committee of the House of Representatives having this bill in charge and the chairman of the committee of the Senate having this bill in charge, both advised the Commissioners of the District of Columbia that it was the purpose and intention of Congress in using that language and in passing the Act of 1923 to give all pensioners the same relief, and to treat them all alike, so that each pensioner of the same rank would receive the same amount of pension. The answer to this allegation is that Commissioner Oyster did say to the other Commissioners and those in authority that he had interviewed these gentlemen and that they had thus stated the case. This is not a denial at all; it is simply an attempt to evade the frank admission of what the facts were. It would seem, therefore, that the law applicable to this case on this point is fully stated in the case of

United States v. Tod, 285 Fed. Rep., 847.

This was a decision by the Circuit Court of Appeals for the Second District and was decided on November 13, 1922. That Court having before it in that case the construction of a legislative enactment. In discussing this point of the law applicable to the case, the

Court, in its opinion, as found on page 851, beginning at paragraph 2 and paragraph 3, laid down the principles which we contend for here, thus: That the debates of Congress are not to be considered by the Court in construing the statement but that the report of a committee of either House is to be consulted with a view of ascertaining the intent of the law-making body in its enactment. We contend further that the declaration of the chairman of the committee which had this legislation in hand when passed in Congress, and in both houses of Congress, is entitled to the greatest weight. We contend further that where the construction to be placed upon the statute, if it be the same as the intention and understanding of Congress as defined by the chairmen of these committees, will avoid *discrimination* and *injury to the individual before the Court*, that construction and understanding should be given the statute.

It is respectfully submitted that the Supreme Court so determined the law in

Duplex Printing Press Co. vs. Deering et al, 65 Law Ed., p. 349, 254 U. S., 443; decided January 3, 1921.

Mr. Justice Pitney, speaking for the Supreme Court in that case, in giving force and effect to the declaration of the legislature in construing the statute, held that the supplemental statement of Mr. Webb, Chairman of the House Committee who had the bill in charge when it was under consideration by the House, should be given great weight in considering the construction to be placed upon it by that Court.

To like effect see the case of

Mennen Co. v. Federal Trade Commission, 288
Fed. Rep., 774.

In that case, as we read it, the Court in discussing this question pointed out that where there was any ambiguity or obscure statement in the statute, the intent of Congress may be gathered from statements of Committees, and further that statements made on the floor of the House may be considered. Therefore, we submit that we have a case where there was some uncertainty in the minds of the Commissioners, whose duty it was to enforce this Act, and that the intent of Congress was therefore sought. We have it undenied that Commissioner Oyster interviewed the chairmen of both committees of Congress having this bill in charge, and that the chairmen of both committees told him that it was the purpose and intention of Congress to treat all policemen alike, and that equalizing the pensions meant the treatment of all alike.

By reference to the hearings before the Committee, it will be found that the question of giving the trial board the right to say how much pension a man should receive, was before Congress and considered by it, and that, with the statement of the chairmen of the committees, and the reasonable construction of the Act itself, would necessarily force the conclusion that Congress intended by the passage of this Act to take from the trial board the power to measure scores and to discriminate according to their own wishes and whims.

**ACTION OF THE COMMISSIONERS AT THE
PASSAGE OF THE ACT IN CONFORMITY
WITH THIS CONSTRUCTION**

We have in this case an allegation that the Commissioners of the District of Columbia of their own motion, and without a physical examination of any man, passed an executive order equalizing the pensions of all policemen and firemen, with the exception of four in question. Executive order (R. 5). Allegation (R. 4, par. 6). On this point the respondents (R. 19) state that the Commissioners of that date (Dec. 5, 1924) construed the Act of 1923 erroneously as requiring the increase of all pensions granted prior to December 5, 1919, the date mentioned in said Act, to the full pension allowed by law, irrespective of whether the recipient was drawing a part pension for a part disability or a full pension for a total disability.

A singular situation is presented therefrom, that is, we have a list which we allege constituted the total list of pensioners at the time of this order (R. 4), which shows the increase of the pension of each, with the exception of the four, to \$87.50. The respondents' answer (R. 15) states thus: "Defendants say that the list of pensioners mentioned in said paragraph is immaterial for the purpose of this case."

Therefore, the Commissioners, according to the respondents' contention, erroneously interpreted the statute and gave to all pensioners the same treatment, equalizing their pensions according to their rank and undoing the injustice which had been done by the trial board; have continued ever since to take out of the Treasury of the United States, from the moneys belonging to the District of Columbia, these increased

pensions, notwithstanding their statement here made that this action by the Commissioners was contrary to law and that all action by the Commissioners since the passage of the Act has been contrary to law; that all moneys received were paid contrary to law; that the auditor of the District of Columbia, and the Comptroller General of the United States, whose duty it is to pass upon these things, have improperly, unlawfully and illegally paid out moneys from the Treasury of the United States to the credit of the District of Columbia, in these increased pensions.

Now they do that without a murmur, and, yet, when the only four men in the list, the four men who apparently walked the streets of Washington for the greatest number of nights, asked for assistance, they replied that the payment of those funds to these four men would disrupt and disorganize the police force.

Indeed, we find the feeling so great—someone had such a personal enmity, or imaginary grudge—so overpowering in its effect that they actually appeal from a decision of the Supreme Court of the District of Columbia to this Court in a desperate effort to prevent these men from receiving that to which they are justly entitled, and at the same time to pay the other pensioners that which they say is illegally paid them.

Is it not indeed astounding that the Corporation Counsel will stand here, and, with one hand uplifted, say that the Commissioners are paying out hundreds of dollars each month unlawfully and improperly to more than a hundred pensioners, while with the other uplifted hand he tells this Court that these two men are not entitled to the same treatment and should not receive it and to pay it would disrupt and disorganize the police force?

Look, moreover, at the action of the trial board. When these men, upon notice from the Commissioners, went to the trial board for the purpose of a physical examination, they were told that no physical examination could be given them, that their cases are not cases for physical examination, but are cases for the law to consider (R. 12).

COMMISSIONERS' PRESENT CONTENTION

The brief filed on behalf of the Commissioners presents the argument that these two individuals must be discriminated against because they were not totally disabled. Looking at the record (R. 3) we find this statement: "Your petitioner says that when he was retired in 1923 he was examined by the Board of Surgeons of the Police Department and as a result of said examination was found unfit for duty and recommended for retirement and was by the Board of Commissioners upon said recommendation retired."

If, therefore, the petitioner was on the date of his retirement unfit for duty, he was entitled to the pension, that is 50% of his salary. The Act itself makes no provision for part payment. It makes no provision for part disability. It takes care of the policemen who had been retired under previous laws. It then provides thus: "And all persons now or hereafter receiving relief from the policemen and firemen's relief fund shall also be entitled to all pension benefits resulting from any increase in pay that has or may hereafter be granted for any period prior to application for an increase in pension under the provisions of this Act."

It would seem, therefore, that the purpose of Congress in enacting this law was to equalize all pensions

giving all policemen in the same grade the same relief, and taking care, likewise, of all policemen retired prior thereto. It will be noted that Congress was careful to provide in section 2 of this Act, that all acts inconsistent with this act are repealed. Now the Commissioners and their advisers must have felt that this act repealed the former acts, because it has been noted that nowhere in this Act is there any contention that they should be examined every two years for part disability.

If the Commissioners had any thought, or the advisers wish to contend, that these people were not entitled to full compensation, but that all others were, why did they refuse to give them a physical examination when they presented themselves for such examination upon the invitation and request of the Commissioners, as they did do, as shown by this record (R. 12, par. 9).

Let us see their answer to this (R. 16). They say, after admitting that Walsh and Doyle's pensions were increased, that they were increased after further examination in which it was found they had an increase in disability. They say as to the allegation that this petitioner presented himself, thus: "Further answering paragraph 9 petitioners say that the present petition of the petitioner for an increase of pension is not based upon an increase of disability, but is based solely upon matters of law, and that he has made no application to the Commissioners for an increase of pension based upon an increase in the disability for which he was originally pensioned."

Now the Commissioners do not deny that they invited this petitioner to come and present himself for

an examination by the trial board. They do not deny his allegation that he was refused an examination by the trial board. They do not deny the allegation that the trial board advised him that they had no right to make a physical examination of him because his right to an increase was no longer a matter for the examining board, but a matter for the corporation counsel and the Commissioners.

It is respectfully submitted that all Acts prior to 1923 were repealed by this act, because they would be clearly inconsistent with the Act. That under the Act of 1923, as interpreted by the Chairmen of the Committees of Congress having it in charge, it was the intention of Congress to give all policemen in the same class the same pension. Now then, that is the interpretation we respectfully urge must be placed upon that Act by the Court unless it would result in discrimination against some of the parties in interest. The record itself answers that question, namely, that any other interpretation than that which we contend for would result in discrimination against these two petitioners.

Therefore, it is respectfully submitted that the action of the lower Court should be sustained, and the relief prayed for granted.

Respectfully submitted,

W. GWYNN GARDINER,
SOUTH TRIMBLE, JR.,
Attorneys for Appellee.

Oct. 29, 1928.

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

APRIL TERM, 1928.

No. 4809.

PROCTOR H. DOUGHERTY, SIDNEY TALIAFERRO,
AND J. FRANKLIN BELL, COMMISSIONERS OF
THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

UNITED STATES OF AMERICA. *EX REL.* SPENCER
ROBERTS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 14, 1928.

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Court of Appeals of the District of Columbia

APRIL TERM, 1928.

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ROBERTS, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
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Court of Appeals of the District of Columbia

No. 4809.

PROCTOR H. DOUGHERTY et al., Appellants,

vs.

U. S. of A. ex. Rel. SPENCER ROBERTS.

a Supreme Court of the District of Columbia.

At Law.

No. 73277.

UNITED STATES OF AMERICA ex Rel. SPENCER ROBERTS,
Relator,

vs.

PROCTOR H. DOUGHERTY, SIDNEY TALIAFERRO, and J. FRANK-
LIN BELL, Commissioners of the District of Columbia,
Respondents.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Petition for Writ of Mandamus.

Filed May 17, 1927.

In the Supreme Court of the District of Columbia.

At Law.

No. 73277.

UNITED STATES OF AMERICA ex Rel. SPENCER ROBERTS,
Relator,

vs.

PROCTOR H. DOUGHERTY, SIDNEY TALIAFERRO, and J. FRANK-
LIN BELL, Commissioners of the District of Columbia,
Respondents.

To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the District of Columbia:

Your petitioner respectfully represents to this Honorable
Court:

1. That he is a citizen of the United States, a resident of
the State of Virginia for the past several years, prior to
which he was a resident of the District of Columbia, and
files this petition in his own right.

2. Heretofore, to wit, and on July 23, 1903, your peti-
tioner was appointed a member of the Metropolitan Police
Force in the District of Columbia, pursuant to an Act of
Congress dated July 1, 1903, increasing the police force of
the District of Columbia by fifty men to be paid for their
services at the rate of Sixty (\$60.00) dollars per month
each.

3. He continued in such position as a member of the
Police Department of the District of Columbia, until, to
wit, August 1st, 1923, on active duty during all of said
time. At the time of his retirement his salary had been
increased by several Acts of Congress during this period,
the salaries of the police on the Metropolitan Police
2 Force having been increased to one hundred fifty
(\$150.00) dollars per month, and your petitioner was
receiving a salary of one hundred fifty dollars (\$150.00)

per month at the time of his retirement from said Force on, to wit, August 1st, 1923.

Your petitioner was retired from the Police Department as a result of disability caused by injuries received in line of duty, and was given a pension as then fixed by the Pension Board of Fifty (\$50.00) dollars per month, which sum was paid him each month until July, 1924, when your petitioner received a pension of Sixty-three and 26/100 (\$63.26) dollars, including pension at that rate from July 1st, 1924.

3. Your petitioner avers and states as a fact that as a member of the Police Department of the District of Columbia, under an Act of Congress of February 25, 1885, creating and providing a pension fund for the policemen and firemen of the District of Columbia, there was deducted out of the salary paid him as such policeman during the whole period of his membership in said Police Department a sum equal to two and one-half per cent ($2\frac{1}{2}\%$) of each month's salary, which sum was applied to the Police Pension Fund out of which fund pensioners were paid relief prior to the Act of February 17, 1923.

4. Your petitioner says that under the Act of Congress of June 13, 1909, it was provided that

“Within thirty days from date of the passage of this act, and every two years thereafter, persons on the pension list of the District of Columbia for disability incurred while in the service of the Police Department or Fire Department of the District of Columbia, shall undergo a medical examination, and as a result of said examination the Commissioners shall determine whether the pension being paid in each case shall continue in whole or in part.”

Your petitioner says that when he was retired in 1923, he was examined by the Board of Surgeons of the Police Department, and as a result of said examination was found unfit for duty and recommended for retirement, and was, by the Board of Commissioners upon said recommendation, retired.

5. Your petitioner states further that thereafter and on, to wit, February 17, 1923, there was approved and became in effect an Act of Congress entitled “An Act to equalize pensions of retired policemen and firemen of the District

of Columbia, and for other purposes.” Which acts reads thus:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That on and after the passage of this Act all persons upon the pension rolls of the police and fire departments of the District of Columbia who were granted relief in accordance with laws enacted prior to December 5, 1919, shall receive such relief as is allowable under existing law, and all persons now or hereafter receiving relief from the policemen and Firemen’s relief fund shall also be entitled to all pension benefits resulting from any increase in pay that has or may hereafter be granted for any period prior to application for an increase in pension under the provisions of this Act: Provided further, That any widow entitled to relief from the policemen and firemen’s relief fund may hereafter receive not more than \$60 per month.

Sec. 2. That all Acts and parts of Acts to the extent that they are inconsistent with this Act are hereby repealed.

Approved, February 17, 1923.”

Your petitioner states that application was made by him for an increase in pension under said act and in accordance with said act and that he was entitled under said act to a pension of Eighty-seven and 50/100 (\$87.50) Dollars per month, but your petitioner was deprived of said increase by the Commissioners, they arbitrarily and unlawfully fixing said increase so that he should receive a pension of only sixty-three and 26/100 (\$63.26) dollars.

4 6. Your petitioner is advised that the Commissioners of the District of Columbia after the passage of said Act and on December 5, 1924, passed upon and gave relief to all of the members of the Police Department entitled to pensions, giving all of said members of the Police Department the increase allowed by law under this Act, with the exception of your petitioner and three others, to wit, Hugh McDermott, J. G. Walsh, and E. W. Boyle. A copy of said Executive Order of the Commissioners of the District of Columbia dated December 5, 1924, increasing said policemen’s pensions, is as follows:

P. D. O. 4. 661.

Commissioners of the District of Columbia, Executive
Office, Washington.

December 5, 1924.

Ordered: That the applications of the following named pensioners of the Metropolitan Police Department for increase in the amount of relief now granted, be, and the same are hereby *improved*, and the relief in each case is hereby increased to the amount indicated, effective on and after the date of application.

Name	Amount of monthly relief	Date effective
Andrews, W. W.....	\$87.50	July 1, 1924
Anderson, W. T.....	125.00	July 22, “
Anderson, Richard.....	79.17	July 1, “
Anderson, Edward.....	87.50	July 16, “
Arendes, J. H.....	87.50	July 1, “
Betts, G. B.....	87.50	July 1, 1924
Bateman, W. W.....	87.50	July 7, “
Boswell, J. H.....	87.50	July 19, “
Browne, Philip.....	100.00	July 1, “
Berman, J. C.....	112.50	July 17, “
Boyle, R. B.....	145.83	July 1, “
Berryman, J. S.....	87.50	July 1, “
Boyce, J. A.....	100.00	July 1, “
Brennan, John.....	87.50	July 1, “
Baur, Frank.....	112.50	July 17, “
Byer, D. W.....	87.50	July 1, “
Barnes, J. E.....	87.50	July 31, “
Brady, W. S.....	87.50	July 15, “
Boyle, E. W.....	63.26	July 23, “
Boyd, G. W.....	112.50	July 12, “
Butler, A. H.....	87.50	July 1, “
5 Catts, J. E.....	100.00	July 1, 1924
Cooney, Owen.....	87.50	July 30, “
Cooper, S. L.....	87.50	August 1, “
Clinton, W. T.....	87.50	July 1, “

Name	Amount of monthly relief	Date effective
Cross, F. E.....	135.42	July 9, 1924
Charlton, L. W.....	87.50	July 15, "
Creamer, W. J.....	87.50	July 1, "
Dunn, J. G.....	87.50	July, 28, 1924
Dyer, R. C.....	87.50	July 1, "
Dawson, T. A.....	87.50	July 1, "
Davis, J. F.....	87.50	July 18, "
Elliott, E. T.....	87.50	July 1, 1924
Elgin, Frank.....	87.50	July 1, "
Ellsworth, Leslie.....	100.00	July 1, "
Edwards, S. D.....	87.50	July 5, "
Emmert, F. R.....	87.50	July 1, "
Emanuel, Sanford.....	87.50	July 1, "
Easley, W. W.....	100.00	July 29, "
Forteney, H. W.....	87.50	July 18, 1924
French, J. S.....	79.17	July 1, "
Falvey, W. F.....	125.00	July 1, "
Fields, N. B.....	87.50	July 1, "
Faulkner, A. M.....	48.72	July 28, "
Gouldman, L. P.....	87.50	July 10, 1924
Gillott, J. L.....	87.50	July 9, "
Garvey, D. J.....	87.50	July 22, "
Gaffield, E. G. A.....	87.50	July 14, "
Garvey, C. E.....	87.50	July 1, "
Gessford, H. L.....	216.67	July 1, "
Gee, Lewis.....	87.50	July 23, "
Holmes, J. H.....	87.50	July 1, 1924
Hackett, F. W.....	87.50	July 21, "
Hunt, A. B.....	87.50	July 23, "
Heil, A. W.....	87.50	July 31, "
Hall, J. A.....	87.50	July 1, "
Holmes, F. P.....	87.50	July 1, "
Hughes, R. H.....	87.60	July 1, "
Hollis, W. M.....	69.58	July 31, "
Hooper, Charles.....	87.50	July 1, "
Hartley, James.....	125.00	July 1, "
Hauze, J. D.....	87.50	July 19, "

Name	Amount of monthly relief	Date effective
Heide, J. C.....	87.50	July 1, 1924
Hutton, H. S.....	87.50	July 1, “
Hughlett, F. S.....	112.50	July 1, “
Howes, M. L.....	87.50	July 1, “
Johnson, E. L.....	87.50	July 21, 1924
Jacobsen, Jacob.....	87.50	July 1, “
Jackson, A. E.....	87.50	July 1, “
Judge, Thomas	125.00	July 1, “
6 Kaucher, Theodore	100.00	July 17, 1924
Kavanagh, James	87.50	July 1, “
Kelley, George	87.50	July 23, “
Keefe, E. J.....	125.00	July 1, “
Kennedy, J. T.....	87.50	July 1, “
Lile, M. M.	87.50	July 1, 1924
Lightfoot, J. E.....	87.50	July 18, “
Law, James	87.50	July 29, “
Langley, D. E.....	87.50	July 11, “
Lynn, A. C.....	112.50	July 1, “
Lockwood, C. L.....	87.50	Aug. 1, “
McNamee, T. B.....	87.50	August 4, 1924
McCarthy, Jeremiah #1.....	87.50	July 2, “
McGrath, J. M.....	87.50	August 13, “
McDermott, Hugh	63.26	July 1, “
McPherson, F. N.....	87.50	July 1, 1924
Mulhall, W. B.....	87.50	July 21, 1924
Mulvey, James	87.50	July 1, “
Morris, Robert	87.50	July 11, “
Moffett, A. D.....	87.50	July 7, “
Murphy, J. J.....	100.00	July 1, “
Monroe, Franklin	87.50	July 23, “
Melton, R. O.....	87.50	July 21 “
Mudd, Edward	87.50	July 1, “
Mellen, Archibald	87.50	July 1, “
Ogle, W. E.....	87.50	July 1, 1924
Perry, J. J.....	87.50	Aug. 1, 1924
Poland, M. L.....	87.50	July 1, “

Name	Amount of monthly relief	Date effective
Preston, J. E.....	100.00	July 1, 1924
Peterson, J. E.....	87.50	July 1, “
Roberts, T. J.....	87.50	July 24, 1924
Rogers, W. J.....	87.50	July 17, “
Rout, W. N.....	87.50	July 1, “
Reilly, L. F.....	87.50	Aug. 1, “
Roberts, Spencer	63.26	July 1, “
Sawyer, J. L. H.....	87.50	July 1, 1924
Sullivan, John	87.50	Aug. 1, “
Stahl, Edward	87.50	July 31, “
Sprinkle, J. F.....	87.50	July 1, “
Sylvester, Richard	216.67	July 1, “
Samson, C. R.....	87.50	July 1, “
Shannon, George	87.50	July 23, “
Strawser, F. S.....	87.50	July 1, “
Schrader, G. A.....	87.50	July 17, “
Short, H. P.....	87.50	July 26, “
Stuermann, William	87.50	Aug. 1, “
Shilling, Anthony	112.50	July 1, “
Stevens, C. A.....	100.00	July 1, “
Smith, W. E.....	87.50	Sept. 3, “
Stringfellow, J. R.....	112.50	July 1, “
7 Smith, H. M.....	87.50	July 29, 1924
Smith, C. E.....	87.50	July 30, “
Thompson, Augustus	87.50	July 18, 1924
Thompson, A. C.....	79.17	July 21, “
Trenis, O. J.....	75.91	July 1, “
Vander Schaaf, Rufus	87.50	July 7, 1924
Vandewalker, L. S.....	87.50	July 1, “
Verr, Henry	87.50	July 20, “
Wannall, H. C.....	87.50	July 17, 1924
Watson, R. C.....	87.50	July 1, “
Walker, E. A.....	87.50	July 1, “
West, R. F.....	87.50	July 1, “
Wheeler, T. C.....	87.50	July 18, “
Weedon, R. E.....	112.50	July 1, “
Williams, G. H.....	125.00	July 1, “

Name	Amount of monthly relief	Date effective
Wheeler, W. W.....	87.50	July 18, 1924
Walsh, J. G.....	63.26	Aug. 22, “
Weeh, George	112.50	July 1, “
Yates, R. C.....	100.00	July 1, 1924

By order of the Board of Commissioners, D. C.

DANIEL E. GARGES,

Secretary of the Board.

Official copy furnished Auditor, G. A. O., Dis. O., P. D.,
2 Persons.

7. Your petitioner further shows that thereafter and on several occasions he sought to have the relief to which he was entitled given him, but he has been unable to obtain any relief from the Commissioners, and, on, to wit, March 5, 1927, after consulting counsel, the following letter was sent to the Commissioners on the subject:

“March 5, 1927.

To the Honorable the Commissioners of the District of
Columbia,
District Building,
Washington, D. C.

GENTLEMEN :

Recently my attention has been invited to a condition with reference to four of our Ex-policemen, which I believe should be given attention by your Board.

8 The names of these four men are: J. G. Walsh,
E. W. Boyle, Spencer Roberts and Hugh McDermott.

These officers were all retired after having served the District in the capacity of policemen for over twenty years, with so far as I have been able to learn, good records. They are receiving \$63.26 each. They are receiving this pension under the Act of Congress approved Feb. 17, 1923, which reads thus:

‘That on and after the passage of this Act all persons upon the pension rolls of the police and fire departments of the District of Columbia who were granted relief in ac-

cordance with laws enacted prior to December 5, 1919, shall receive such relief as is allowable under existing law, and all persons *now* or *hereafter* receiving relief from the policemen and firemen's relief fund shall also be entitled to all pension benefits resulting from any increase in pay that has or may hereafter be granted by Congress; Provided, that no arrears of pension shall be granted for any period prior to an application for an increase in pension under the provisions of this Act; Provided further, that any widow entitled to relief from the policemen and firemen's relief fund may hereafter receive not more than \$60 per month.'

When my attention was called to this situation, I asked for a list of all of the pensioners in the Police Department, and I found that these four men are the only men who are receiving a pension so small as that stated, to wit, \$63.26.

I then made some inquiry and investigation for the purpose of ascertaining what treatment the others were receiving or had received as a result of this Act of Congress, and I find that men were raised from \$20 a month to \$69.18, and are now receiving that pension, whose term as active policemen was less than five years.

Take, for instance, Officer C. P. Posey, and there are other cases like his.

I also find some cases like this: Take Officer L. P. Goldman. He was receiving \$40 pension at the date of the passage of this Act, and today is receiving \$87.50. If you will examine his record, I think you will find that he was a policeman less than five years.

It would seem that under the provision of the Act of Feb. 17, 1923, these four men should not be discriminated against in the manner indicated, and I am sure that they would not have been had the attention of the Commissioners and those having to do with this matter been invited to that condition.

9 I would appreciate it, therefore, if you gentlemen would look into this matter and advise me of what action, if any, should in your opinion be taken in the matter.

I am sending a copy of this letter to the Chief of Police and to the Corporation Counsel, so that they may be ad-

vised of these facts and have an opportunity of checking up the data furnished in this letter.

Very respectfully,

W. GWYNN GARDINER."

8. And the Commissioners through the Corporation Counsel, replied to such communication under date of April 11, 1927, thus:

"Government of the District of Columbia, Office of the Corporation Counsel, Washington.

April 11, 1927.

Mr. W. Gwynn Gardiner,
Woodward Building,
Washington, D. C.

MY DEAR SIR:

Answering your inquiry in regard to the pensions awarded to Boyle and others, I find that these men were not sent to the Board for examination as to physical ability, but the question relating to their pension was a purely legal question.

It appears that these men were pensioned for partial disability and not total disability and that is the reason that they are not drawing a total pension. Boyle for example was retired on a pension of \$50 a month, and the pension for total disability at that time was \$69.16. Subsequently when the law equalizing pensions was passed these men were automatically raised in the proportion which their original pensions were to a total pension. Boyle's pension was accordingly raised to \$63.20 and the total pension for his rank under the law was \$87.50. That is, you will find, the pension paid him originally \$50 bears the same relation to total disability existing at that time, \$69.16, as his present pension \$63.26 bears to a total pension at the present time \$87.50. If any of these men claim an increase in disability, of course, that is a medical question to be settled by physical examination.

With best regards, I am,

Very truly yours,

F. H. STEPHENS,
Corporation Counsel, D. C."

FHS.GG.

10 9. Your petitioner advises, however, that between the dates of March 5th, 1927, and April 11th, 1927, he was directed by the authorities of the District of Columbia, through the precinct in which he did duty, to appear before the Board of Police Surgeons at No. 3 Truck Company, located at 14th St. and Ohio Ave. Northwest, for the purpose of a physical examination.

Your petitioner in response to said notification and request did appear and presented himself to the Board of Surgeons of the Police Department of the District of Columbia, at the No. 3 Truck House, whereupon, he was advised by Dr. Kilroy, one of the Police Surgeons of the District of Columbia, and Secretary of the Board, that under the Act of Congress approved Feb. 17, 1923, he had no authority to make an examination of your petitioner, and that the matter was a legal question to be dealt with by the Commissioners and the Corporation Counsel and not for the Board of Police Surgeons.

Your petitioner is advised, and upon information and belief states that since the letter of March 5th, 1927, the pensions of E. W. Boyle and J. G. Walsh have been increased.

10. Your petitioner advises the Court that the salary of the individual privates of the Metropolitan Police Force who have been on duty for a period in excess of three years is Twenty-one hundred (\$2,100.00) Dollars, and he is advised that under the Act of Congress equalizing pensions to policemen, he is entitled and has been since the 1st day of July, 1924, entitled to a pension of \$87.50 per month.

11. And being advised that his only remedy is by a writ of mandamus to require the Commissioners to pass such necessary and proper orders as are necessary to carry out the Act of Congress of February 17, 1923, in so far as
11 it relates to your petitioner, and to issue such proper checks or vouchers as are necessary to pay to your petitioner the said amount of eighty-seven and 50/100 (\$87.50) dollars per month since August 1st, 1923, instead of the sum of Sixty-three and 26/100 (\$63.26) dollars, the amount received by him, under protest.

Thereupon, premises considered, petitioner prays:

1. That a writ of mandamus may issue out of this Honorable Court directed to the relators and each of them, requiring them to appear in this Court and answer this peti-

tion and show cause, if any they have, why the writ of mandamus should not be issued against the relators, and each of them, requiring them to pay to your petitioner the sum of \$87.50 per month as a pension instead of the sum of \$63.26 per month, the amount they are now paying and seeking to continue to pay him as a pension.

2. And that your petitioner may have such other, further and general relief in the premises as he may be entitled to, and as to the Court may seem just and proper in the premises.

SPENCER ROBERTS,

Petitioner.

_____,
Solicitor for Petitioner.

DISTRICT OF COLUMBIA, ss:

Spencer Roberts being first duly sworn on oath deposes and says that he has read the foregoing petition for writ of mandamus by him subscribed, and knows the contents thereof, and that the same is true; that statements made on information and belief, he verily believes to be true.

SPENCER ROBERTS.

Subscribed and sworn to before me this 29th day of April, 1927.

[SEAL.]

EVA W. SAMPSON,

Notary Public.

My Commission Expires Nov. 10th, 1930.

12

Rule to Show Cause.

Filed May 17, 1927.

* * * * *

Upon consideration of the Petition asking for a Mandamus against the Commissioners of the District of Columbia, filed in this cause on the 17th day of May, 1927, and upon consideration of the same by the Court, it is by the Court this 17th day of May, A. D. 1927,

Ordered that the defendants, Proctor H. Dougherty, Sidney Taliaferro and J. Franklin Bell, Commissioners of the District of Columbia, appear in this court and show cause

if any they have on Friday next, May 20th, 1927, at 10 o'clock A. M., why a Mandamus should not issue against the said Proctor H. Dougherty, Sidney Taliaferro and J. Franklin Bell, as Commissioners of the District of Columbia, as prayed for in said petition; provided a copy of this Order be served on them on or before the 18th day of May, 1927.

By the Court.

WALTER I. McCOY,
Justice.

Marshal's Return.

Served a copy of the within rule on Proctor L. Dougherty Commissioner of the Dist. of Columbia 5/18/27 personally.

EDGAR C. SNYDER,
U. S. Marshal in and for the District of Columbia,

By JACK HAWKINS,
Deputy U. S. Marshal.
D. A. R.

13 *Answer to Original Bill and Rule to Show Cause.*

Filed June 3, 1927.

* * * * *

Now come the defendants, the Commissioners of the District of Columbia, and for answer to the original bill filed herein and to the rule to show cause, show to the court as follows:

1 and 2. Defendants admit the allegations of paragraphs one and two.

3. Answering paragraph three defendants say that the basic salary of a private of Class 3, in which class the petitioner belonged at the time of his retirement, was \$1,660.00. Defendants admit that petitioner was retired at a pension of \$50.00 per month which was afterwards increased to \$63.26 as alleged.

3. (2nd Par.) Answering this paragraph of the petition these defendants say that under the Act of February 25,

1885, (23 St. 316) the sum of One Dollar per month was deducted from the pay of each policeman and fireman to create a pension fund for these services, and under section 12 of the Act of September 1, 1916, a deduction of one and one-half per cent per annum, and under the Act of June 7, 1924, two and one-half per cent per annum of the salary of each policeman and fireman has been deducted and contributed to the pension fund.

4. Defendants admit the allegations in paragraph four but allege that petitioner was retired under the Act of September 1, 1916, referred to in the foregoing paragraph.

5. Answering paragraph five, defendants admit the allegations contained in the first paragraph thereof referring to the Act of February 17, 1923.

14 Answering the second paragraph of said paragraph, these defendants say that the petitioner was entitled to an increase in pension under the said Act of February 17, 1923, because of the increase which had been made in the salaries in the Police Department, and his pension was accordingly increased from \$50.00 a month, the amount of his original pension, to \$63.26, the amount of pension which has been paid to him since the said increase was made. Defendants deny that he is, or ever was, entitled to a pension of \$87.50 per month.

6. Answering paragraph six, these defendants admit the passage of the Order of December 5, 1924, which increased the pensions of all pensioners who had been pensioned prior to December 5, 1919; that under said Order the pensions of all such persons were increased to full disability pensions, equal to one-half of the basic pay existing at the time of the passage of said Order.

They deny that all pensions with the exception of McDermott, Walsh and Boyle, were so increased, but aver that the persons pensioned since December 5, 1919, were increased only in proportion to the raise in salaries, and aver that there are many persons now on the pension roll, pensioned since last mentioned date, who are drawing part disability pensions and not full disability pensions.

Defendants say that the list of pensioners mentioned in said paragraph is immaterial for the purpose of this case.

7 and 8. Defendants admit the allegations of paragraphs seven and eight.

9. Defendants admit the pensions of Walsh and Boyle have been increased as alleged, but aver that such increases were granted after medical examination, and report by the Board of Police and Fire Surgeons that such pensioners had suffered an increase in disability, and were, therefore, entitled to an increase in pension.

Further answering paragraph nine petitioners say that the present petition of the petitioner for an increase of pension is not based upon an increase of disability, but is based solely upon matters of law, and that he has made no application to the Commissioners for an increase of pension based upon an increase in the disability for which he was originally pensioned.

10. Answering paragraph ten defendants say that the salary of a private on the Metropolitan Police Force at the present time is \$2,100.00 and that the full disability pension based on such a salary would be \$87.50 per month, but they deny that pensioner is entitled to a full disability pension or that he is entitled to a pension of \$87.50 per month, or has ever been so rated by the Retiring and Relief Board of the District of Columbia, or by the Commissioners thereof.

11. Answering paragraph 11 defendants advise that the petitioner is not entitled to a writ of mandamus, or any relief whatever under the circumstances; is not entitled to a pension of \$87.50 per month, and is only entitled to the pension now being received by him,—\$63.26 per month.

12. Further answering said petition these defendants say that the petitioner was pensioned on the 27th day of July, 1923, effective Aug. 1, by the Policemen and Firemen's Retiring and Relief Board at the rate of \$50.00 per month as being partly disabled for the performance of police duties; that the basic salary of a private of Class 3, to which petitioner belonged, at that time was \$1,660.00, and that the total disability of pension based upon such a salary would be \$830.00 per annum, or \$69.16 per month. That thereafter by the Act of May 27, 1924, the basic salary of the class to which petitioner belonged was increased to \$2,100.00, which would warrant a total disability pension of \$87.50 per month, but as the petitioner was not totally disabled his pension was increased under the Act of February 17, 1923, only in the proportion that the salary existing at the time of his retirement bore to the

increased salary and that he was therefore entitled only to a pension for part disability, that is, \$63.26 per month, which the petitioner is now receiving.

Having fully answered the said petition and rule, defendants pray that both may be dismissed.

PROCTOR H. DOUGHERTY,
J. F. BELL,
SIDNEY F. TALIAFERRO,
Commissioners of the District of Columbia.

F. H. STEPHENS,
Attorney for Defts.

DISTRICT OF COLUMBIA, ss.

We, the Commissioners of the District of Columbia, and the defendants herein, do solemnly swear that we have read the foregoing and annexed answer by us subscribed, and know the contents thereof, and that the matters and things therein stated upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

PROCTOR H. DOUGHERTY,
J. F. BELL,
SIDNEY F. TALIAFERRO,
Commissioners of the District of Columbia.

Subscribed and sworn to before me this 26th day of May, 1927.

[SEAL.]

DANIEL E. GARGES,
Notary Public, D. C.

17

Amendment to Petition.

Filed September 14, 1927.

* * * * *

Leave of Court first had and obtained and with the consent of opposing counsel, petitioner files this as an amendment to his original bill in the above entitled cause, by adding the following as paragraph 5½ to the bill:

Your petitioner states that when the Act of Congress, approved February 17, 1923, for the purpose of equalizing

pensions in the District of Columbia, was enacted and became law, the question of the construction of said Act arose, there being the contention on the one side that the purpose and intention of Congress in the passage of said Act was to give each pensioner in the same class the same amount of pension, that is one-half of his actual pay while on active duty; whereas on the other side there was a contention that the Commissioners of the District of Columbia under said Act still had the power and right upon the recommendation and approval of the Retiring Board to fix a pension less than said amount. Whereupon Captain James F. Oyster, then one of the Commissioners of the District of Columbia, and having direct supervision and control of the police and firemen under the assignments of the Commissioners, interviewed the chairman of the Committee in the House of Representatives of Congress, and the chairman of the Committee in the Senate of Congress, with a view of ascertaining the purpose and intention of Congress in passing such legislation, and after such conference Captain James F. Oyster reported to those in interest that he had interviewed such chairmen of such Committees, and that the chairmen of both Committees had advised him that

18 it was the purpose and intention in passing said Act to equalize pensions, to equalize them by giving each policeman and fireman then retired or to be retired, the same relative pension, that is one-half of their pay. And that as a result of such advice and information imparted to those in interest by the said James F. Oyster as Commissioner of the District of Columbia, the Commissioners of the District of Columbia passed the order of December 5, 1924, referred to as a part of paragraph 6 of this petition, increasing the pensions in accordance with said Act and the intention of Congress as advised by the chairmen of the Committees and as appears in the Act itself, and equalized their pensions as shown by said order, except as to these two pensioners and two other pensioners, who have since been increased by an order of the Commission. And petitioner is now advised that the action of the Commission in failing to increase the pension of your petitioner was an error unintentionally committed; that all of said increases were made without any physical examination and without any regard to the physical condi-

tion of the pensioner at the time of the passage of said Act or the order of December 5, 1924, increasing the pensions.

W. GWYNN GARDINER,
Attorney for Petitioner.

(Endorsed.)

Let the amendment be filed.

F. L. SIDDON, S.
Justice.

19 *Answer to Amended Petition.*

Filed September 20, 1927.

* * * * * *

Answering paragraph five and a half, filed by way of amendment to the original petition herein, defendants say that Commissioner Oyster's statement therein of his understanding of the Act of 1923 and his report of conversations with the Chairmen of the District Committees in the Senate and House were related to counsel and repeated to the Court at the oral argument of this cause. Such statement, however, applied only to pensions granted prior to December 5, 1919, the date mentioned in the Act of 1923. Neither counsel, nor these defendants, knows what statement of the situation was made to the said Chairmen, nor what proposition was considered by them, other than as gathered from the report of the said Commissioner Oyster. The Act of 1923 was passed to raise pensions granted prior to December 5, 1919, to a parity with those subsequently granted, for the reason that the pensions are based upon the basic salary of the position held by the pensioner at the time of his retirement. Salaries were much smaller prior to the date mentioned than after said date, and the pensions were therefore smaller. The Commissioners of that date construed the Act of 1923 erroneously, as requiring the increase of all pensions granted prior to December 5, 1919, the date mentioned in said Act, to the full pension allowed by law, irrespective of whether the recipient was

drawing a part pension for a part disability or a full pension for a total disability. Defendants deny that the plaintiff fell within the class intended to be granted a full pension, even under the erroneous interpretation of the
20 Commissioners. The plaintiff was pensioned subsequent to the Act of December 5, 1919, and did not fall within the favored class. He and many others, pensioned subsequent to the said Act, were granted pensions proportionate to their disabilities and were not granted full pensions as a matter of course. Some of these were increased because of increase of disabilities, some because of increase in the salary of the positions. Among the latter was an increase to the plaintiff, as elsewhere stated.

PROCTOR H. DOUGHERTY,
SIDNEY F. TALIAFERRO,
W. B. LADUE,

Commissioners of the District of Columbia.

DISTRICT OF COLUMBIA, ss:

We, the Commissioners of the District of Columbia, and the defendants herein, do solemnly swear that we have read the foregoing and annexed answer to amended petition by us subscribed, and know the contents thereof, and that the matters and things therein stated upon our personal knowledge are true, and those stated upon information and belief, we believe to be true.

PROCTOR H. DOUGHERTY,
SIDNEY F. TALIAFERRO,
W. B. LADUE,

Commissioners of the District of Columbia.

Subscribed and sworn to before me this 20 day of September, A. D., 1927.

[SEAL.]

GEORGIA F. GREEN,
Notary Public, D. C.

WILLIAM W. BRIDE,
F. H. STEPHENS,
Attorneys for Defendants.

21

Final Decree.

Filed June 12, 1928.

* * * * *

The President of the United States to the respondents,
Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, the relator by his counsel filed his petition for a writ of mandamus to be directed to said respondents requiring and commanding them to pay to the relator the sum of Eighty-seven and 50/100 (\$87.50) Dollars per month as pension due the relator under the Act of Congress approved February 17, 1923, being an Act entitled "An Act to equalize Pensions of retired Policemen and Firemen of the District of Columbia, and for other purposes," and

Whereas, the respondents answered said petition and the relator demurred thereto, and the demurrer being before the Court for hearing, and the Court being of the opinion that the relator is entitled to the relief prayed for, and that the respondents should be required and commanded to pay to him the said pension of Eighty-seven and 50/100 (\$87.50) dollars per month, and that the action of the respondents in so refusing and disallowing said pension to the relator is arbitrary and unlawful, and the respondents electing to stand upon their answer;

It is, therefore, this 12th day of June, A. D. 1928, adjudged, ordered and decreed that a writ of peremptory mandamus issue out of this court to the said respondents, Proctor H. Dougherty, Sidney Taliaferro and J. Franklin Bell, and each of them, commanding them to place the peti-

22 tioner, Spencer Roberts, upon the pension rolls of the District of Columbia as a pensioner under the Act of February 17, 1923, with compensation at the rate of Eighty-seven and 50/100 (\$87.50) Dollars per month, commencing with the 5th day of December, 1924, said payments to continue, as provided for in the said Act of Congress of

February 17, 1923. And that costs of this proceeding be taxed against the respondents and in favor of the relator.

By the Court:

F. L. SIDDONS,
Justice.

Respondents note an appeal in open court from the above entitled decree to the Court of Appeals of the District of Columbia, and said appeal is hereby allowed.

By the Court:

F. L. SIDDONS,
Justice.

Assignment of Errors.

Filed June 15, 1928.

* * * * *

Now come the respondents, by their counsel, and assign for error,—

1. The action of the court in awarding a mandamus in the above cause.

2. The action of the court in ordering the relator to be placed upon the pension rolls of the District of Columbia with compensation of eighty-seven 50/100 dollars (\$87.50) per month.

3. The action of the court in ordering a total pension for a part disability.

WILLIAM W. BRIDE,
F. H. STEPHENS,
Attorneys for Respondents.

Designation of Record.

Filed June 15, 1928.

* * * * *

The clerk of the court will please prepare a transcript of record in the above cause for the Court of Appeals, consisting of,—

1. The original petition and the rule to show cause.
2. The amendment to the petition.

3. The answers to the original petition and to the amendment.
4. The judgment of the court, and the appeal in open court.
5. The assignment of errors.
6. This designation.

WILLIAM W. BRIDE,
F. H. STEPHENS,
Attorneys for Respondents.

24 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 23, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 73277 at Law, wherein United States of America, ex rel. Spencer Roberts is Relator and Procter H. Dougherty et al. Commissioners of the District of Columbia, are Respondents, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of August, 1928.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk,
By CHAS. B. COFLIN,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4809. Procter H. Dougherty et al., appellants, vs. U. S. of A. ex rel. Spencer Roberts. Court of Appeals, District of Columbia. Filed Aug. 14, 1928. Henry W. Hodges, clerk.